
THE RIGHT TO COMPENSATION AND PROTECTION OF HUMAN RIGHTS

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ABSTRSACT

Human rights are fundamental entitlements that every individual possesses by being human. These rights are universally recognized moral principles that establish standards for human behavior and are often enshrined in both national and international laws. They are considered inherent and inalienable, meaning they cannot be taken away or given up. The right to compensation plays a crucial role in the protection of human rights by serving as a fundamental mechanism for acknowledging violations and providing redress to victims. This concept is rooted in the belief that when human rights are infringed upon, individuals should receive adequate compensation not only as a form of restitution but also as a recognition of the harm suffered. The principle of responsibility implies that the state in violation must make compensation for damages. This is stated in Articles 12 and 13 of the International Covenant on Political and Civil Rights and Article 5, Section 5 of the International Covenant on Social, Economic, and Cultural Rights. However, for it to be truly effective, greater emphasis must be placed on enforcement, awareness, and accessibility. India must continue to strengthen its institutional resolve to ensure that victims of state excesses receive timely, adequate, and meaningful redress.

Keywords: Human Rights, Right to Compensation, Principle of Responsibility, Damages, International Covenant on Political and Civil Rights.

INTRODUCTION

The American Jurist **Henry Ward Beecher** opined, “*A law is valuable not because it is a law, but because there is right [right to compensation] in it.*”¹

In other words, the worth of any statute lies in the commitment to justice of that statute and not simply its existence in the legislation. The significance of a statute comes from its caucus or alignment with how much justice it provides to the victims in the form of compensation rather than a rule on a piece of paper. Statutes gain importance through the principles of fairness and justice they uphold not merely because they are enacted. What makes a statute meaningful and important in a society is its foundation in ethical rights as providing compensation to the aggrieved victims rather than its status as only a legal statute.

Human rights are fundamental entitlements that every individual possesses by being human. These rights are universally recognized moral principles that establish standards for human behavior and are often enshrined in both national and international laws. They are considered inherent and inalienable, meaning they cannot be taken away or given up. Human rights are regarded as the foundation of humanity; without them, humanity will be in jeopardy, it was also opined by **Nelson Mandela** in his speech, “*To deny people their human rights is to challenge their very humanity*”,² one of the basic foundations of human rights is to provide compensation to the aggrieved victims.

The right to compensation plays a crucial role in the protection of human rights by serving as a fundamental mechanism for acknowledging violations and providing redress to victims. This concept is rooted in the belief that when human rights are infringed upon, individuals should receive adequate compensation not only as a form of restitution but also as a recognition of the harm suffered. By the matter of the right to compensation, we are dealing with different matters. Very often, it is a matter of one's assured right in violation of his right for the damage of the inflicted injury. This antidemocratic solution, not preventing further rights violations or further constraints on an already injured person, results from not giving compensation to the applicant.

¹ Henry Ward Beecher, *A Law Is Valuable, Not Because It Is a Law, But Because There Is Right in It*, in *Proverbs from Plymouth Pulpit* 25 (New York, D. Appleton & Co. 1887).

² Nelson Mandela, *Speech at a Joint Meeting of the U.S. Congress* (June 26, 1990), in *To Deny People Their Human Rights Is to Challenge Their Very Humanity*, available at Nelson Mandela Foundation, <https://www.nelsonmandela.org/news/entry/to-deny-people-their-human-rights-is-to-challenge-their-very-humanity>.

The offered solution and regulations at the international and similar levels are guaranteed solutions for prompt and sufficient redress, which means it is not only a matter of providing reparation as compensation for the past but also a matter of provision for the future.³

The principle of responsibility implies that the state in violation must make compensation for damages. This is stated in Articles 12 and 13 of the International Covenant on Political and Civil Rights and Article 5, Section 5 of the International Covenant on Social, Economic, and Cultural Rights. The United Nations even made the topic for the 'Basic Principles and Procedure for the Order of Means of All Violations of Human Rights and Basic Agreement Protection,' where they stated that in the event of a violation of relative duties, which concern certain rights protected by this Agreement, every party concerned confirms this right through the submission of an application to the responsible international foundation that has the competence to examine complaints operative under this agreement. In the Indian legal system till recently, the law of Tort has been sought to claim compensation for the breach of legal rights. Still, due to the tiresome, long, and hectic procedure to claim damages under private law, the SC has also recognized the Right to Compensation against violating the right to life under Art. 21 of the Indian constitution.

EVOLUTION OF THE RIGHT TO COMPENSATION AS A CONCEPT

Ancient Period

The origin of the Right to Compensation can be traced back to ancient history. One of the early traces in ancient times can be found in the period of the Code of Ur-Nammu from 2050 B.C. Beginning in antiquated Sumeria, the Code of Ur-Nammu laid out unambiguous monetary pay for substantial injuries. For instance, on the off chance that a man caused an eye deficiency, he was expected to pay a specified sum in silver.⁴ This code is intended to create value and equity inside society by giving clear rules for compensation.

Another trace of the Right to Compensation evolution can be seen in the Code of Hammurabi from 1750 B.C. Following Ur-Nammu, the Code of Hammurabi further fostered the idea of compensation, specifying explicit installments for different wounds. It included arrangements

³ U.N. Human Rights Comm., General Comment No. 31: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, ¶ 16, U.N. Doc. CCPR/C/21/Rev.1/Add.13 (May 26, 2004).

⁴ Joshua J. Mark, *Code of Ur- Nammu*, World History Encyclopedia, (October 26, 2021).

for repaying misfortunes like fingers or eyes, accordingly formalizing the connection between actual mischief and monetary reward. The code additionally presented the possibility of responsibility because of the issue, where punishments were imposed depending on the extent of the damage caused.⁵

Other than the Code of Ur-Nammu and the Code of Hammurabi, different old societies, similar to Greek, Roman, Middle Eastern, and Chinese social orders, made their pay plans. These frameworks indicated installments in light of the deficiency of body parts or specific wounds. For example, old Bedouin regulation esteemed the departure of a thumb joint at a portion of the worth of a finger, representing an early comprehension of relative remuneration for actual damage. In antiquated Rome, common regulation gave systems to remunerating people who experienced actual disabilities because of another's activities. These affiliations gave a common guide to individuals who were harmed or became sick, guaranteeing that they got support during troublesome times. This training featured shared liability regarding individual government assistance. In old India, work freedoms were perceived through different texts that illustrated fair wages and conditions for laborers. The writing recommends that opportune installments and fair treatment are essential to work relations. Arrangements for rewards and government-managed retirement-like measures show an early comprehension of laborer government assistance and pay.⁶

Medieval Period

In the medieval period, the major trace of compensation for any injury to a person by another person can be found in 'Weregild (Wergeld)', which means 'Man Payment'.⁷ Weregild is the blood money, the monetary value assigned to a person, set according to a rank, used to determine the compensation paid by the perpetrator of a crime to the victim in the case of injury or the victim's kindred in the case of homicide. Compensation is thusly determined and paid, a reparative payment.

Weregild was an important legal mechanism in early Germanic society. In the Celtic code,

⁵ The Editors of Encyclopaedia Britannica, *Code of Hammurabi*, Encyclopedia Britannica, (June 6, 2025) <https://www.britannica.com/topic/Code-of-Hammurabi>

⁶ Daniel Gomes, *Ur- Nammu and Hammurabi: Pre-Mosaic Codes of Law*, Medium (Jun 3, 2022), Pre-Mosaic Codes of Law | by Daniel Gomes | Medium | Biblion

⁷ William M. McGovern, Contract in Medieval England: The Necessity for Quid pro Quo and a Sum Certain, 13 The American Journal of Legal History, 173, 201 (1969)

Weregild was a value placed on every being and piece of property. If the property was stolen or someone was injured or killed, the guilty person would have to pay the guild as restitution to the victim's family or the owner of the property. In specific regions a man's not entirely set in stone by his status in the public eye; for instance, in Britain, a primitive ruler's wergild could be ordinarily that of an everyday person. The wergild of a lady was typically equivalent to, and frequently more than, that of a man of a similar class; in certain regions, a lady's wergild may be twice that of a very remarkable man. Church likewise had their own pace of wergild, albeit this was in some cases reliant upon the class into which they were conceived.⁸

Besides the rule of Weregild in the early Germanic society, one of the other traces of compensation can be found in the 'Canon Law of the Church'⁹, which played an important role in shaping ideas about compensation during the period. It presented ideas of moral obligation and local area government assistance, affecting how social orders saw commitments to repay those hurt by unjust demonstrations.

By the late medieval period, legal practices started to develop with the foundation of courts that could mediate cases for compensation because of laid-out regulations rather than individual arrangements or primitive commitments. This shift denoted a critical stage towards the current general sets of laws where formal courts handle disagreements regarding pay.

Modern Period

In the Modern Period, the idea of compensation can be traced to the late 19th century, particularly with the rise of industrialization, as the requirement of a formalized system for worker compensation became apparent. The enactment of the 'Worker's Accident Insurance'¹⁰ in Prussia denoted a vital movement in this evolution. This framework offered monetary help for harmed laborers and laid out the rule that employers couldn't be sued for work environment wounds, consequently making an elite cure framework. This model influenced numerous nations, including the US, prompting the foundation of comparable worker compensation regulations worldwide. In the US, states started sanctioning their own worker's compensation regulations beginning with Wisconsin in 1911. These regulations commonly included

⁸ Dr. Rahul Tripathi, *The Judicial System in Medieval India*, Brewminate: A Bold Blend of News and Ideas (August 16, 2018). *The Judicial System in Medieval India*. Brewminate: A Bold Blend of News and Ideas

⁹ Geoffrey MacCormack, *The Inheritance and Wergild in Early Germanic Law- I*, 8 Irish Jurist, 143, 163, (1966)

¹⁰ Workers' Accident Insurance 1884

arrangements that restricted a harmed worker's capacity to sue their manager in return for ensured pay.

The latter half of the 20th century saw a shift towards recognizing compensation as a fundamental human right. Global instruments like the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power¹¹ stressed workers' freedoms to remuneration and compensation as fundamental parts of equity frameworks around the world.

The idea of compensation extended past work regulation into more extensive areas of public regulation and common freedoms. In numerous purviews, including India, compensation started to be perceived as a right under sacred regulation. Critical legal choices in the late 20th century stressed that infringement of crucial freedoms could warrant remuneration from the state. For example, the *Rudal Shah v. State of Bihar*¹² case demonstrated that courts could grant compensation for a breach of fundamental rights utilizing the power of writ jurisdiction.

At last, the development of the right to compensation is a reflection of larger shifts in society around justice and personal freedom. This idea has changed dramatically from antiquated laws requiring financial compensation to contemporary frameworks acknowledging full victim rights under human rights law.

LEGAL FRAMEWORK OF RIGHT TO COMPENSATION

A crucial component of legal systems worldwide is the right to compensation, which gives people the means to pursue justice for various wrongdoings, such as personal injury, occupational accidents, and rights abuses. The concepts and methods for compensation are established by a combination of national legislation, international treaties, etc. Some of them are as follows:

International Treaties

A thorough framework for the rights of victims of flagrant violations of international human rights law and significant breaches of international humanitarian law was established by the 'United Nations Basic Principles and Guidelines on the Right to a Remedy and Reparation'¹³,

¹¹ UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, 1985

¹² *Rudal Shah v. State of Bihar*, AIR 1983 SC 1086

¹³ UN Basic Principles and Guidelines on a Right to a Remedy and Reparation, 2005

which were approved in 2005. These guidelines uphold victims' rights to efficient remedies, including access to the legal system and compensation for losses incurred. One essential element is the right to compensation, which emphasizes that victims need to get monetary recompense for damages that can be measured economically in proportion to the seriousness of the violation. Restitution, compensation, rehabilitation, satisfaction, and assurances of non-repetition are the five types of reparation that are described in the recommendations.

Additionally, they emphasize the significance of equitable access to justice, guaranteeing that victims can pursue compensation irrespective of the wrongdoer. The guidelines also emphasize that nations must provide important information about violations of the law and potential means of compensation. Although these recommendations are not legally enforceable, they are an essential tool for nations to use when creating domestic laws that protect victims' rights and hold violators accountable, thereby strengthening international human rights norms.

Besides the 'United Nations Basic Principles and Guidelines on the Right to a Remedy and Reparation'¹⁴ Based on the ideas of state responsibility and the need to make amends for wrongdoing, the right to compensation under the International Court of Justice (ICJ) is a crucial component of international law. Through several significant decisions, the United Nations-created International Court of Justice (ICJ) has produced a strong body of precedent regarding compensation. The idea that violating an international responsibility requires reparations, as stated in Article 36(2)¹⁵ of the International Law Commission's Articles on State Responsibility, is fundamental to its methodology. The Court has repeatedly underlined that any monetarily measurable harm, including material and moral damage, must be covered by compensation. Famous cases like Diallo¹⁶ and the Corfu Channel¹⁷ have demonstrated the ICJ's dedication to making sure victims get fair compensation. In these situations, the Court has granted flexibility in determining damages while maintaining justice for impacted parties by basing compensation decisions on equitable principles. An important advancement in the ICJ's compensation jurisprudence has also been the recognition by the court that environmental harm is compensable under international law. According to the Court's decisions, proving a causal

¹⁴ *Id.* At 07

¹⁵ U.N. Int'l Law Comm'n, Draft Articles on Responsibility of States for Internationally Wrongful Acts, art. 36(2), U.N. Doc. A/56/10, at 208 (2001).

¹⁶ Ahmadou Sadio Diallo (Guinea v. Dem. Rep. Congo), (2007) I.C.J. 582

¹⁷ Corfu Channel (U.K. v. Alb.), Judgment, 1949 I.C.J. 4

connection between the wrongdoing and the harm sustained is crucial to determining compensation.

All things considered, the ICJ is crucial in forming international compensation law, upholding the idea that governments must answer for their deeds and giving victims a way to pursue compensation for rights abuses. The ICJ's developing approach to compensation is still essential for advancing justice and accountability globally, especially as environmental and human rights concerns continue to gain attention.

One of the important international treaties on the Right to Compensation is the International Law Commission's (ILC) Articles on State Responsibility.¹⁸ These articles, which were adopted in 2001, lay out the principles that regulate state accountability, with a special emphasis on the need to provide complete compensation for any harm brought about by such actions. According to Article 31¹⁹, a state that commits internationally unlawful conduct is required to make up for the harm done, including both material and moral harm. Restitution, recompense, and satisfaction are the three main types of reparation that are outlined in the articles. When possible, restitution should be made to return things to as they were before the wrongdoing occurred; however, if this is not possible or would be too burdensome, recompense for any monetary loss must be made. Article 36²⁰ expressly requires the responsible state to compensate for damages, stressing that this duty covers all types of injury that the aggrieved person may have experienced.

Furthermore, the ILC articles acknowledge that victims may sustain different kinds of injury, calling for a flexible approach to compensation that can take into account both monetary losses and intangible hurt. Throughout the paragraphs, the full restitution concept is emphasized, reiterating that damages must fairly compensate for the seriousness of the breach and the harm it caused to the victims. However, debates over "crippling compensation" have surfaced, highlighting worries about circumstances in which complete compensation, especially in developing countries, might financially collapse a responsible state. Although the ILC's approach encourages accountability, some contend that it also has to take into consideration the real-world effects of placing significant financial constraints on governments.

¹⁸ Responsibility of States for Internationally Wrongful Acts, in Report of the International Law Commission on the Work of Its Fifty-third Session, U.N. GAOR, 56th Sess., Supp. No. 10, at 43, U.N. Doc. A/56/10 (2001).

¹⁹ Draft Articles on State Responsibility, art. 31.

²⁰ Draft Articles on State Responsibility, art. 36.

All things considered, the ILC Articles on State Responsibility offer a thorough legal foundation for comprehending and upholding the right to compensation under international law, guaranteeing that governments are held responsible for their deeds while also tackling the difficulties associated with offering victims sufficient restitution.

Other than the ‘United Nations Basic Principles and Guidelines on the Right to a Remedy and Reparation’, ‘the International Court of Justice (ICJ)’ and ‘International Law Commission’s (ILC) Articles on State Responsibility’, ‘European Convention on Human Rights’²¹ (ECHR) mainly expresses the right to compensation through several provisions that impose duties on member states to compensate victims of human rights abuses. In particular, Article 5²² provides an enforceable right to compensation for anybody who has been the victim of an unauthorized arrest or imprisonment. This clause emphasizes the significance of responsibility in defending individual liberties by guaranteeing that those who have been unlawfully deprived of their freedom may pursue compensation.

Furthermore, in circumstances of infringement, such as those involving torture or cruel treatment under Article 3²³, the European Court of Human Rights (ECtHR) has interpreted other provisions to entail a right to compensation, awarding damages for both bodily and psychological suffering. Member nations are obligated to implement the ECtHR's rulings, including paying the Court's compensation awards. This system encourages adherence to human rights norms throughout Europe in addition to giving specific victims a way to seek compensation. The Council of Europe's Committee of Ministers supervises the implementation of these rulings, making sure that governments carry out their duties to provide victims with fair compensation. With the help of these clauses, the ECHR²⁴ creates a strong foundation for defending individual liberties and upholding the idea that people who have been subjected to human rights abuses should be compensated for their suffering and have access to appropriate remedies.

One of the other international frameworks is the ‘American Convention on Human Rights’²⁵. Article 10²⁶ of the American Convention on Human Rights specifically provides that everyone

²¹ Convention for the Protection of Human Rights and Fundamental Freedoms, Nov. 4, 1950, 213 U.N.T.S. 221.

²² ECHR, art. 5.

²³ ECtHR, art. 3

²⁴ *Supra* note 22, at 09.

²⁵ American Convention on Human Rights, Nov. 22, 1969, 1144 U.N.T.S. 123.

²⁶ ACHR, art. 10.

has the right to be compensated according to the law if they have been condemned due to a miscarriage of justice. This article emphasizes the states' commitment to correcting unjust convictions and ensuring that those who have suffered as a result of court mistakes get adequate restitution. The Convention requires member states to develop legal systems that enable this right, ensuring that victims can seek compensation efficiently.

In addition, the Inter-American Court of Human Rights is essential to the enforcement of this right since it decides cases involving abuses of human rights and establishes suitable settlements, such as compensation for victims' losses. The Court highlights in its decisions the need to provide equitable and sufficient compensation to restore justice and recognize the harm done to people. This framework encourages accountability in judicial systems throughout member states in addition to resolving individual complaints. A larger culture of justice and human rights protection in the Americas is facilitated by the American Convention's recognition of the right to compensation, which upholds the idea that those who suffer from court errors should be compensated.

Another is 'International Humanitarian Law (IHL)'. One essential tenet of international humanitarian law (IHL) is the right to compensation²⁷, which guarantees that armed conflict victims will be compensated for the losses they incur as a result of IHL violations. The Hague Conventions²⁸ and the Geneva Conventions²⁹, which impose duties on governments to compensate for harm brought about by their war acts, are two legal documents that uphold this right. According to Article 3³⁰ A belligerent party that violates the terms of the Hague Convention IV³¹ is required to compensate for any damages inflicted.

Furthermore, nations must compensate for both material and non-material damages to make amends for violations of IHL, according to the ICRC's Customary International Humanitarian Law regulations. A variety of damages, including physical injuries, psychological distress, lost wages, and property damage, may be covered by compensation. Compensation should be

²⁷ Geneva Convention Relative to the Protection of Civilian Persons in Time of War, Aug. 12, 1949, 75 U.N.T.S. 287, arts. 3, 91.

²⁸ Hague Convention IV Respecting the Laws and Customs of War on Land, Oct. 18, 1907, 36 Stat. 2277, 1 Bevans 631, arts. 3, 23(g), 28.

²⁹ Geneva Convention IV Relative to the Protection of Civilian Persons in Time of War, Aug. 12, 1949, 75 U.N.T.S. 287, arts. 3, 91.

³⁰ IHL, art. 3

³¹ Hague Convention IV Respecting the Laws and Customs of War on Land, Oct. 18, 1907, 36 Stat. 2277, 1 Bevans 631.

adequate and proportionate to the severity of the breach and the circumstances surrounding it, according to the UN Basic Principles and Guidelines on the Right to a Remedy and Reparation.

Moreover, the International Criminal Court (ICC) and the International Court of Justice (ICJ) have also addressed compensation in instances involving mass crimes as part of their reparative mandates, highlighting the need for nations to guarantee victims have access to efficient remedies. All things considered, the structure that oversees compensation under IHL emphasizes the necessity of justice and responsibility for armed conflict victims, reaffirming the idea that individuals injured by violations have a right to sufficient recompense.

LEGISLATION OF VARIOUS INDIVIDUAL NATIONS

There are many nations which had proper legislation that deals with the Right to Compensation of the victim, some of them are as follows:

United States of America (USA)

Federal and state laws largely regulate the right to compensation in the United States, especially when it comes to property rights, workers' compensation, and victim compensation. Employees hurt on the job can get medical benefits and salary replacement under the Workers' Compensation Act's no-fault system without having to demonstrate the carelessness of their employer. While federal employees are insured by the Federal Employees' Compensation Act (FECA),³² each state manages its own workers' compensation program. Maritime workers are also covered under the Longshore and Harbor Workers' Compensation Act³³. Numerous states have implemented Crime Victim Compensation Programs to provide financial aid for medical costs and lost income to victims of violent crimes.

Additionally, the U.S. Constitution's Fifth Amendment³⁴ guarantees that private property cannot be seized for public purposes without fair compensation, especially where eminent domain is involved.

European Union (EU)

The primary directives and laws that govern the right to compensation in the European Union

³² Federal Employees' Compensation Act, 5 U.S.C. §§ 8101–8193 (2024).

³³ Longshore and Harbor Workers' Compensation Act, 33 U.S.C. §§ 901–950 (2024).

³⁴ U.S. Const. amend. V.

are designed to protect victims of crime and to uphold the rights of passengers. The Council Directive³⁵ It is a significant piece of legislation that requires EU member states to set up national compensation programs for victims of violent, intentional crimes. This decision guarantees that all victims, irrespective of their nationality or residency status, can get compensation from the state in the nation where the crime was committed. In addition to compensation for victims of crime, EU Regulation,³⁶ describes the rights of passengers, including the entitlement to reimbursement for rejected boarding, aircraft cancellations, and delays longer than three hours. The compensation range is €250 to €600, depending on the distance of the flight.

Japan

The Industrial Accident Compensation Insurance Act³⁷, which requires businesses to insure workers who get diseases or injuries at work, is the main law governing the entitlement to compensation in Japan. This law guarantees several benefits for wounded workers, including as pensions for permanent disability, medical costs, and compensation for temporary absences. In particular, after the fourth day of absence, an employee who is unable to work because of an injury is eligible to receive Temporary Absence from Work Benefits, which is equivalent to 80% of their basic daily benefits. In addition, the Act ensures financial support for the families of workers who have died in workplace accidents by paying them a lump sum.

The basis for compensation in workplace infractions is further strengthened by the Labor Requirements Act, which sets minimum standards for working conditions and employee rights. The legal system in Japan places a strong emphasis on a holistic approach to worker protection, combining several regulations that together guarantee that workers have access to the help and compensation they require in the wake of occupational illnesses or workplace accidents.

India

In India, there is the Employees' Compensation Act³⁸ requires companies to compensate workers who sustain injuries while on the job, which is the main law governing the right to compensation for diseases and injuries suffered at work in India. This Act provides for death,

³⁵ EUC, 2004/80/EC

³⁶ EU Regulation (EC) No. 261/2004

³⁷ Industrial Accident Compensation Insurance Act (Law No. 50 of 7 April 1947)

³⁸ Employees' Compensation Act, No. 8 of 1923, India.

permanent partial disability, and permanent total disability, with precise compensation amounts determined by the severity of injuries. For example, when a worker dies in a work-related accident, the compensation is determined by multiplying 50% of the worker's monthly salary by a relevant factor or by a minimum of ₹1,20,000, whichever is greater. 60% of the worker's monthly salary or ₹1,40,000, whichever is higher, is the compensation amount in cases of permanent complete disablement. Moreover, Comprehensive social security benefits, including medical attention and financial support for dependents in the event of a work-related death, are also provided under the Employees' State Insurance Act.³⁹ Recent changes have enhanced these rules to improve safeguards and guarantee that workers are aware of their rights about compensation. When taken as a whole, these legal frameworks demonstrate India's dedication to protecting workers' rights and providing the assistance they require when they suffer diseases or accidents at work.

In summary, Every nation has created its legal framework to deal with these problems; for example, the European Union's Council Directive⁴⁰, the United States' state-specific workers' compensation statutes, India's Employees' Compensation Act⁴¹, etc all offer crucial protections for victims. These frameworks not only guarantee that people get the money they need, but they also encourage governments and companies to take responsibility for their actions.

Furthermore, nations' obligations to compensate victims of rights breaches are reinforced by international accords such as the African Charter on Human and Peoples' Rights⁴² and the American Convention on Human Rights. These legislative initiatives emphasize the significance of guaranteeing that everyone has access to efficient remedies and assistance, eventually promoting a more fair and equitable society across many legal contexts, as awareness of worker protections and human rights continues to rise globally.

INTERNATIONAL HUMAN RIGHTS INSTRUMENTS FOR THE RIGHT TO COMPENSATION

The right to compensation is acknowledged by international human rights legislation as being essential to upholding people's dignity and guaranteeing their access to justice, especially for

³⁹ Employees' State Insurance Act, No. 34 of 1948, India.

⁴⁰ *Supra* note 36, at 12.

⁴¹ *Supra* note 39, at 13.

⁴² African Charter on Human and Peoples' Rights, June 27, 1981, O.A.U. Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982).

those whose rights have been infringed. Several international human rights documents cover the right to compensation, albeit their exact terms and extent may differ. The following are some significant international agreements that either explicitly or indirectly support the right to compensation for infringement of human rights:

- **Universal Declaration of Human Rights (UDHR):**

First and Foremost, The Right to Compensation is tactically acknowledged in the 1948 Universal Declaration of Human Rights⁴³ (UDHR) as a necessary component of guaranteeing justice and retribution for basic rights abuses. Article 8⁴⁴ of the Declaration affirms that “everyone has the right to an effective remedy by competent national tribunals for acts violating the fundamental rights granted by the constitution or the laws”, even though “compensation” is not used explicitly. By guaranteeing that those whose rights have been violated can seek suitable remedies, which may include monetary compensation, this clause emphasizes the significance of access to justice. Comparably, Article 10⁴⁵ establishes the foundation for legal procedures that permit remedies, such as compensation, by guaranteeing the right to a fair and public hearing by an unbiased judge.

Furthermore, Article 17⁴⁶, which shields people against arbitrary property deprivation, suggests that compensation is required in cases where such violations do place. Furthermore, Article 5⁴⁷ The ban on torture and cruel treatment is consistent with later human rights frameworks that specifically call for victims to receive financial compensation and rehabilitation. Even while the UDHR doesn't outline the specifics of reparations, its tenets have had a direct impact on legally binding agreements that recognize compensation as an essential part of justice, such as the Convention Against Torture⁴⁸ and the International Covenant on Civil and Political Rights⁴⁹ (ICCPR).

⁴³ Universal Declaration of Human Rights, G.A. Res. 217 (III) A, U.N. Doc. A/810 at 71 (Dec. 10, 1948).

⁴⁴ UDHR, art. 8

⁴⁵ UDHR, art. 10

⁴⁶ UDHR, art. 17

⁴⁷ UDHR, art. 5

⁴⁸ Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, 1465 U.N.T.S. 85.

⁴⁹ International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171.

- **International Covenant on Civil and Political Rights (ICCPR)**⁵⁰

The right to an effective remedy, which includes the right to restitution for civil and political rights abuses, is firmly emphasized by the International Covenant on Civil and Political Rights (ICCPR). Article 2(3)⁵¹, which requires States Parties to guarantee that anybody whose rights or freedoms under the Covenant have been infringed has access to an appropriate remedy, is the main source of this. Furthermore, it requires that responsible authorities implement such remedies, especially in cases where persons acting in official capacities committed the infraction. This clause emphasizes the State's obligation to offer channels for redress, such as monetary compensation, restitution, rehabilitation, or other types of reparation, where appropriate, in addition to preventing infringement.

In certain situations, such as Article 9(5)⁵², which expressly protects the right to compensation for anybody who has been wrongfully imprisoned or detained, the ICCPR further upholds this concept. The Covenant's dedication to redressing victims' pain and guaranteeing responsibility is shown in its acknowledgment of compensation as a fundamental component of justice. Furthermore, Article 14(6)⁵³ stipulates that anyone convicted of a crime and later cleared by fresh evidence is entitled to compensation in circumstances of miscarriages of justice.

In its General Comment⁵⁴ The Human Rights Committee, which oversees the ICCPR, explained that States are required to guarantee effective remedies, including monetary compensation, and that these remedies be available, enforceable, and enough to undo the harm.

- **European Convention on Human Rights (ECHR)**

The right to compensation is included in the European Convention on Human Rights (ECHR)⁵⁵ as a crucial component of providing victims of human rights breaches with justice. Article 13⁵⁶, which ensures that anybody whose rights and freedoms under the Convention have been infringed has the right to an effective remedy before a national authority, is the main example

⁵⁰ *Ibid.*, at 50.

⁵¹ ICCPR, art. 2(3)

⁵² ICCPR, art. 9(5)

⁵³ ICCPR, art. 14(6)

⁵⁴ Human Rights Committee, General Comment No. 31: Nature of the General Legal Obligation Imposed on States Parties to the Covenant, U.N. Doc. CCPR/C/21/Rev.1/Add.13 (2004).

⁵⁵ Convention for the Protection of Human Rights and Fundamental Freedoms, Nov. 4, 1950, 213 U.N.T.S. 221.

⁵⁶ ECHR, art. 13

of this concept in action. Despite not specifically mentioning compensation, Article 13⁵⁷ has been seen to encompass monetary compensation as a component of the more comprehensive notion of effective remedies. In addition, Article 41⁵⁸ expressly allows for "just satisfaction," which gives the European Court of Human Rights (ECtHR) the authority to compensate victims of rights violations financially in cases where national remedies are judged to be insufficient or non-existent. This clause guarantees victims' financial compensation to make up for the harm caused by the infringement of their rights under the Convention.

In interpreting and implementing these principles, the ECHR has been crucial, frequently providing damages, legal fees, and recompense for moral injury endured by persons. For instance, in cases involving illegal imprisonment, property seizure, or violations of the Convention's Articles 2⁵⁹, 3⁶⁰, and 5⁶¹ on the right to life and the ban against torture, the Court often provides a financial remedy. In addition, victims must be able to get sufficient restitution at both the national and international levels, as the European Court of Human Rights has stressed that the right to an effective remedy under Article 13⁶² must be realistic and reachable. Therefore, combining the tenets of Articles 13 and 41⁶³, the ECHR gives victims the authority to hold States responsible in addition to establishing the legal foundation for compensation. This strong system demonstrates the Convention's dedication to maintaining justice, guaranteeing responsibility, and giving persons whose basic rights have been infringed back their dignity.

NATIONAL HUMAN RIGHTS INSTRUMENTS FOR THE RIGHT TO COMPENSATION

Human Rights are not merely limited to their recognition, but providing compensation for its violation is also very important. Compensation serves not only as a form of corrective justice but also as a disincentive against abuse of power. In India, the right to compensation has evolved through constitutional interpretation and institutional development, culminating in national human rights instruments that provide both recognition and remedy.

⁵⁷ *Ibid.*, at 57.

⁵⁸ ECHR, art. 41

⁵⁹ ECHR, art. 2

⁶⁰ ECHR, art. 3

⁶¹ ECHR, art. 5

⁶² ECHR, art. 13

⁶³ ECHR, art. 41

Some of them are as follows:

1. Article 21⁶⁴ of the Indian Constitution

“No person shall be deprived of his life or personal liberty except according to procedure established by law.”

This brief yet powerful provision has evolved into the backbone of human rights protection in India. It serves as the principal constitutional foundation for the recognition of various unenumerated rights, including the right to compensation for violations committed by state authorities. While the Constitution does not explicitly provide for compensation, Indian courts, through progressive judicial interpretation, have made Article 21⁶⁵ a living instrument of justice.

The Indian judiciary, particularly the Supreme Court, has developed a distinct jurisprudence in which compensation for the violation of fundamental rights, especially those related to unlawful deprivation of life and liberty, can be claimed directly under Article 21.

a. Rudul Sah v. State of Bihar⁶⁶

In this landmark case, the Supreme Court awarded monetary compensation to a man who had been unlawfully detained in prison for over 14 years even after his acquittal. The Court held that such illegal detention amounted to a violation of Article 21 and that compensation was the only appropriate public law remedy.

b. Nilabati Behera v. State of Orissa⁶⁷

In a case involving custodial death, the Court declared that monetary compensation is a legitimate remedy for violation of Article 21 rights. It distinguished public law remedies from private tort remedies, emphasizing that compensation can be granted by constitutional courts without waiting for a full civil suit.

Therefore, Article 21, in its evolved interpretation, stands as a cornerstone of human rights in

⁶⁴ Ind. Const. art. 21

⁶⁵ *Ibid.*, at 65.

⁶⁶ Rudul Sah v. State of Bihar, (1983) 4 S.C.R. 141, 1983 AIR 1086 (India).

⁶⁷ Nilabati Behera v. State of Orissa, (1993) 2 S.C.C. 746 (India).

India. Through judicial creativity and constitutional morality, it has emerged as a national human rights instrument for the right to compensation. This right acts as a bridge between the recognition of fundamental rights and their meaningful enforcement. For the protection of human dignity and the rule of law, the compensatory aspect of Article 21 must continue to be strengthened, both judicially and legislatively.

2. Protection of Human Rights Act,⁶⁸

The PHRA, was enacted to institutionalize the protection and promotion of human rights as guaranteed by the Constitution and embodied in international instruments to which India is a party. Under this law, the National Human Rights Commission (NHRC)⁶⁹ and State Human Rights Commissions (SHRCs)⁷⁰ were established. These bodies are empowered to inquire into complaints of human rights violations, recommend remedial measures, and, notably, suggest compensation to the victims.

According to Sec 18(e)⁷¹ of the PHRA, the commission may, “recommend to the concerned Government or authority the payment of compensation or damages to the complainant or the victim or the members of his family.”

This provision transforms the idea of compensatory justice from an abstract principle to a concrete administrative recommendation in cases where human rights, especially the right to life and dignity, are violated.

Therefore, the Protection of Human Rights Act⁷² is a cornerstone in India's national human rights framework, especially for operationalizing the right to compensation. Empowering statutory bodies like the NHRC to recommend redress in cases of rights violations brings the abstract guarantees of the Constitution into tangible relief for victims.

CONCLUSION

The right to compensation is an indispensable pillar in the broader architecture of human rights

⁶⁸ The Protection of Human Rights Act, No. 10 of 1993, India.

⁶⁹ National Human Rights Commission (NHRC), established under The Protection of Human Rights Act, No. 10 of 1993, India, §§ 3–6.

⁷⁰ State Human Rights Commissions (SHRCs), established under The Protection of Human Rights Act, No. 10 of 1993, India, §§ 21–28.

⁷¹ PHRA, § 18(e)

⁷² The Protection of Human Rights Act, No. 10 of 1993, India.

protection. It goes beyond mere monetary redress; it embodies the recognition of human dignity, the acknowledgment of State responsibility, and the promise of justice to individuals who have suffered violations at the hands of authorities or due to systemic failures. In a democratic society governed by the rule of law, such a right ensures that justice is not only declaratory but also restorative, giving victims a tangible form of redress and fostering accountability within governance structures.

India's commitment to human rights, as enshrined in its Constitution and reinforced through legislative instruments like the Protection of Human Rights Act,⁷³ reflects a growing emphasis on the right to compensation as a tool for both deterrence and justice. Judicial precedents under Article 21⁷⁴ of the Constitution have made it clear that the right to life and personal liberty includes within its ambit the right to seek compensation for unlawful arrest, custodial violence, police excesses, and administrative negligence. The judiciary has emerged as a vigilant protector of individual rights, developing the concept of constitutional tort to address State liability.

Moreover, institutions such as the National Human Rights Commission (NHRC) have played a crucial role in operationalizing this right by investigating complaints, recommending interim monetary relief, and sensitizing authorities to their obligations under human rights law. While these recommendations are not binding, their moral authority and public visibility have frequently led to compliance, thereby bridging the gap between legal pronouncements and administrative action.

However, significant challenges remain. The lack of enforceability of NHRC's recommendations, bureaucratic apathy, underreporting of violations, and delays in the disbursement of compensation undermine the effectiveness of the current system. A more structured statutory mechanism is needed to ensure time-bound implementation, uniform standards for compensation, and greater awareness among citizens about their rights.

⁷³ *Ibid.*, at 73.

⁷⁴ Ind. Const. art. 21